

1 SHARON F. RUBALCAVA (State Bar No. 067363)  
2 PETER A. NYQUIST (State Bar No. 180953)  
3 ERIN L. CURRAN (State Bar No. 209055)  
4 **WESTON BENSHOOF ROCHEFORT**  
5 **RUBALCAVA MacCUISH LLP**  
6 333 South Hope Street, Sixteenth Floor  
7 Los Angeles, California 90071  
8 Telephone: (213) 576-1000  
9 Facsimile: (213) 576-1100

10 Attorneys for Petitioner  
11 THE BOEING COMPANY

12 **STATE OF CALIFORNIA**

13 **STATE WATER RESOURCES CONTROL BOARD**

14 In the Matter of the Petition for Review by The  
15 Boeing Company of Waste Discharge Requirements  
16 Order Nos. R4-2004-0111 and R4-2006-0008

No.

17 THE BOEING COMPANY'S PETITION FOR  
18 REVIEW OF WASTE DISCHARGE  
19 REQUIREMENTS ORDER NOS. R4-2004-  
20 0111 AND R4-2006-0008 [NPDES NO.  
21 CA0001309]

22 **I. INTRODUCTION**

23 Pursuant to Water Code section 13320(a) and California Code of Regulations, title  
24 23, section 2050, The Boeing Company ("Boeing") respectfully petitions the State Water Resources  
25 Control Board ("State Board") for review of certain actions, and failure to act, by the Los Angeles  
26 Regional Water Quality Control Board ("Regional Board"). Boeing seeks review of several  
27 substantial issues in connection with the following decisions of the Regional Board: (1) issuance of  
28 Waste Discharge Requirements Order No. R4-2004-0111 ("2004 Permit"), on July 1, 2004; (2)  
issuance of Waste Discharge Requirements Order No. R4-2006-0008 ("2006 Permit"), on January  
19, 2006, which substantially amended the 2004 Permit; and (3) failure to adopt Cease and Desist  
Order No. R4-2006-0YYY ("CDO") on January 19, 2006.<sup>1</sup>

<sup>1</sup> Boeing separately filed a Request for Stay on February 15, 2006, seeking relief from certain waste discharge requirements imposed by the 2004 and 2006 Permits, which request was supported

1 Previously, Boeing filed a Petition for Review of the 2004 Permit on August 2, 2004.  
2 At Boeing's request, said petition was held in abeyance while Boeing determined whether it could  
3 achieve compliance with strict permit limits. At the time, Boeing confirmed with the State Board  
4 that, in the event the appeal was activated, Boeing would be "given the opportunity to amend the  
5 petition and submit detailed Points & Authorities." (Petition for Review of Waste Discharge  
6 Requirements, filed August 2, 2004, at 4:22-24.) Data collected since the effective date of the 2004  
7 Permit conclusively establish that Boeing cannot currently achieve compliance with the strict limits  
8 therein. Boeing has therefore requested that its Petition for Review of the 2004 Permit be taken out  
9 of abeyance for consideration by the State Board.

10 In connection with the present petition, a hearing concerning further proposed  
11 amendments to the 2006 Permit is scheduled to occur before the Regional Board on March 9, 2006.  
12 Boeing has advised the State Board that it intends to submit its Points and Authorities shortly  
13 thereafter, which will address, in a consolidated manner, relevant issues concerning the 2004 Permit,  
14 amendments to the 2004 Permit (as set forth in the 2006 Permit), the Request for Stay, and any  
15 further revisions to the 2006 Permit the Regional Board may adopt at the March 9, 2006 hearing that  
16 Boeing may wish the State Board to review. The State Board has agreed that Boeing is entitled to  
17 supplement this petition in such manner by submitting consolidated Points and Authorities following  
18 the March 9, 2006 hearing.

19 Boeing's Petition for Review is based on the following:

20 1. **NAME & ADDRESS OF PETITIONER**

21 The Boeing Company  
22 6633 Canoga Ave.  
23 P.O. Box 7922  
24 Canoga Park, California 91309-7922  
25 Attention: Steve Lafflam  
26 (818) 466-8877  
27 stephen.r.lafflam@boeing.com

28 by appropriate points and authorities and supporting declarations. Boeing has requested a hearing on  
its stay request at the earliest feasible date.

1  
2           **2.     ACTIONS FOR WHICH BOEING SEEKS REVIEW**

3           At this time, Boeing seeks review of: (1) the 2004 Permit, NPDES No. CA0001309,  
4           adopted by the Regional Board on July 1, 2004; (2) the 2006 Permit (amending the 2004 Permit),  
5           adopted by the Regional Board on January 19, 2006; and (3) the Regional Board's failure to adopt a  
6           proposed CDO on January 19, 2006, contrary to the recommendation of Regional Board staff to  
7           provide Boeing interim limits and a compliance schedule. Copies of the 2004 Permit and 2006  
8           Permit adopted by the Regional Board, and the tentative CDO that the Regional Board declined to  
9           adopt, are submitted herewith. Depending on the outcome of the March 9, 2006 hearing before the  
10          Regional Board concerning proposed further amendments to the 2006 Permit, Boeing may amend  
11          this petition to seek review of the Regional Board's actions.

12           **3.     DATE ON WHICH REGIONAL BOARD ACTED**

13           The Regional Board adopted the 2004 Permit on July 1, 2004. Boeing initially filed a  
14           "placeholder" Petition for Review on August 2, 2004, which was placed in abeyance by the State  
15           Board at Boeing's request. On February 15, 2006, Boeing requested the State Board to take this  
16           petition out of abeyance for consideration by the State Board with the present issues.

17           The Regional Board adopted the 2006 Permit, and declined to adopt the CDO, on  
18           January 19, 2006.

19           **4.     STATEMENT OF REASONS WHY THE REGIONAL BOARD'S ACTION**  
20           **WAS IMPROPER**

21           The issuance of the 2004 and 2006 Permits was beyond the authority of the Regional  
22           Board, inappropriate or improper, or not supported by the record, for the following reasons: (1) the  
23           2004 and 2006 Permits impose numeric discharge limitations on storm water discharges, in violation  
24           of the State Implementation Plan, and contrary to federal and state law and regulatory guidance; (2)  
25           the 2004 and 2006 Permits utilize "reasonable potential analysis procedures" that are inapplicable  
26           and inappropriate for storm water discharges; (3) the Regional Board abused its discretion by failing  
27           to consider substantial, undisputed evidence that immediate compliance with the 2004 and 2006  
28           Permits is infeasible; (4) the Regional Board abused its discretion by refusing to adopt interim limits

1 and a schedule for compliance as to both the 2004 and 2006 Permits; (5) Boeing, its customers and  
2 significant matters of public interest will suffer substantial harm as a result of the Regional Board's  
3 actions; (6) the Regional Board deprived Boeing of its due process right to a fair hearing.

4 5. **THE MANNER IN WHICH PETITIONER IS AGGRIEVED**

5 Boeing incorporates by reference herein Section III.A. of its Request for Stay, which  
6 discusses the manner by which Boeing is substantially harmed by the Regional Board's actions and  
7 failure to act.

8 Additionally, the imposition of numeric limits to storm water discharges in the 2004  
9 and 2006 Permits will likely result in: (1) substantially increased compliance costs, without any  
10 discernable benefits to receiving water quality; (2) additional, unjustified regulatory requirements;  
11 (3) imposition of penalties for failure to meet permit limits that are beyond Boeing's reasonable  
12 control; and (4) the need to implement expansive containment measures, with potentially significant  
13 adverse environmental impacts, to fully capture and treat storm water so as to prevent any discharges  
14 that will result in permit exceedances.

15 6. **SPECIFIC ACTION BY THE STATE BOARD THAT PETITIONER**  
16 **REQUESTS**

17 Boeing respectfully requests that the State Board determine that the Regional Board's  
18 actions in adopting the 2004 and 2006 were inappropriate and improper, and make the following  
19 determinations: (1) stay and vacate any new numeric effluent limits added to the 2004 or 2006  
20 Permits applicable to storm water discharges; (2) stay and vacate any new numeric effluent limits  
21 added to the 2004 or 2006 Permits applicable to combined storm water and waste water discharges,  
22 and amend the Permits to include reasonable compliance schedules; (3) stay and vacate any new  
23 numeric effluent limits added to the 2006 Permit applicable to waste water discharges at Outfalls  
24 012 and 018, and amend the Permit to include a reasonable compliance schedule; and (4) apply any  
25 relief granted in connection with either the 2004 or 2006 Permits retroactively to the effective dates  
26 of the Permits.

1  
2           7.     **STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL**  
3                   **ISSUES RAISED IN THE PETITION**

4           As set forth above, Boeing will submit its Points and Authorities in support of legal  
5 issues raised in this petition shortly after the next meeting of the Regional Board, presently  
6 scheduled to occur on March 9, 2006.

7           8.     **STATEMENT THAT PETITION HAS BEEN SENT TO REGIONAL BOARD**

8           A true and correct copy of this Petition for Review was sent to the Regional Board via  
9 electronic mail and First Class Mail on February 21, 2006, to the attention of Jonathan Bishop,  
10 Executive Officer.

11          9.     **STATEMENT THAT ISSUES WERE RAISED BEFORE THE REGIONAL**  
12                   **BOARD, AND EXPLANATION WHY PETITIONER WAS UNABLE TO**  
13                   **RAISE SUBSTANTIVE ISSUES BEFORE THE REGIONAL BOARD**

14          The substantive issues and objections raised in this Petition were raised by Boeing  
15 before the Regional Board through numerous written comments, submittal of voluminous data and  
16 analyses of site and permit conditions, and hearing testimony before the Regional Board.

17          In preparation for the January 19, 2006 Regional Board hearing, Boeing submitted a  
18 written request to Regional Board staff for a 90-minute allotment of time to present relevant facts  
19 and arguments regarding the 2006 Permit and CDO, due to the significant compliance issues  
20 confronting Boeing. The Regional Board denied Boeing's request, and limited Boeing's  
21 presentation to 45 minutes. Moreover, a significant portion of Boeing's allotted time –  
22 approximately 10 minutes – was spent addressing Boeing's objections to inappropriate and entirely  
23 new revisions to the 2006 Permit that were presented to Boeing for the first time at the hearing.  
24 Finally, the Regional Board declined to provide Boeing additional time to present a brief  
25 (approximately 3-minutes long) video depicting conditions at its Santa Susana Field Laboratory  
26 facility following the recent Topanga Fire that burned through most of the site, and which was  
27 directly relevant to the issues being considered by the Regional Board. These limitations severely  
28 prejudiced Boeing's ability to give a complete presentation of the complex factual, technical and

1 legal circumstances presented by this matter.

2 10. **REQUEST FOR HEARING**

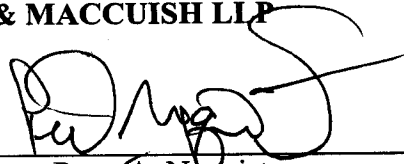
3 Boeing requests that the State Board schedule a hearing addressing its Request for  
4 Stay at the earliest feasible date, at which time Boeing reserves the right to present additional  
5 evidence or testimony to the State Board. Boeing further requests that the State Board schedule a  
6 hearing addressing its petitions seeking review of the 2004 and 2006 Permits at the earliest feasible  
7 date. Likewise, in connection with said hearing, Boeing reserves the right to present additional  
8 evidence or testimony to the State Board and will submit to the State Board, if appropriate,  
9 statements regarding evidence pursuant to Code of California regulations, title 23, section 2050(b).

10 **IV. CONCLUSION**

11 For all of the foregoing reasons, Boeing respectfully requests the State Board to: (1)  
12 stay and vacate any new numeric effluent limits added to the 2004 or 2006 Permits applicable to  
13 storm water discharges; (2) stay and vacate any new numeric effluent limits added to the 2004 or  
14 2006 Permits applicable to combined storm water and waste water discharges, and amend the  
15 Permits to include reasonable compliance schedules; (3) stay and vacate any new numeric effluent  
16 limits added to the 2006 Permit applicable to waste water discharges at Outfalls 012 and 018, and  
17 amend the Permit to include a reasonable compliance schedule; and (4) apply any relief granted in  
18 connection with either the 2004 or 2006 Permits retroactively to the effective dates of the Permits.

19 DATED: February 21, 2006

20 SHARON F. RUBALCAVA  
21 PETER A. NYQUIST  
22 ERIN L. CURRAN  
23 **WESTON, BENSHOOF, ROCHEFORT,**  
24 **RUBALCAVA & MACCUISH LLP**

25   
26 \_\_\_\_\_  
27 Peter A. Nyquist  
28 Attorneys for Petitioner  
THE BOEING COMPANY